

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD DEVITT BIDWELL,

Defendant-Appellant.

UNPUBLISHED
February 17, 2004

No. 242969
Presque Isle Circuit Court
LC No. 01-091976-FH

Before: Sawyer, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury-trial conviction of three counts of home invasion, MCL 750.110a(3), and two counts of breaking and entering, MCL 750.110. Defendant was sentenced to concurrent prison sentences of 32 to 180 months for each home invasion conviction, and 32 to 120 months for each breaking and entering conviction. We affirm.

Defendant alleges that the trial court's ruling allowing the admission of certain other acts was highly prejudicial and, therefore, was not harmless error. We review a trial court's admission of evidence for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). A trial court's decision on a "close evidentiary question" will not qualify as an abuse of discretion. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998).

MRE 404(b) governs the admission or exclusion of other acts evidence. Generally, evidence of other crimes, wrongs, or acts of an individual is inadmissible to prove a propensity to commit these acts. MRE 404(b)(1). Other acts evidence may be admissible, however, for other purposes "such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case." MRE 404(b)(2).

In *People v VanderVliet*, 444 Mich 52, 73-74; 508 NW2d 114 (1993), our Supreme Court rejected any bright line approach for evaluating MRE 404(b) evidence and instead adopted a four-prong test. First, to be admissible, the evidence must be offered for a proper purpose under MRE 404(b). *VanderVliet*, *supra*, 444 Mich at 55. Second, the evidence must be relevant under MRE 402 as enforced through MRE 104(b). *Id.* Third, the evidence's probative value cannot be substantially outweighed by the risk of unfair prejudice. *Id.* And finally, the trial court may, on

request, provide a limiting instruction to the jury. *Id.* It is under this test that we now review defendant's claim.

The prosecutor's argument for admitting the other acts evidence was that they proved a common scheme or plan. The uncharged offenses were highly similar to the charges actually brought. Defendant and his accomplices used the same patterns when scouting and planning, and they used the same method when actually breaking and entering the premises in each case. In *People v Sabin*, 463 Mich 43, 63; 614 NW2d 888 (2000), our Supreme Court determined that "evidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system." Here, it is apparent that because the uncharged and charged offenses were virtually identical in nature, this "support[s] an inference that they are manifestations of a common plan, scheme, or system." *Id.*

Next, we examine whether the probative value of the evidence was substantially outweighed by its possible prejudicial effect. Defendant argues that the other acts evidence did nothing to show a plan, scheme, or system that had not already been established by the evidence of the charged crimes. Therefore, the addition of the other acts evidence was not necessary; rather, it was highly prejudicial and should have been excluded. Defendant's argument is flawed, however, because it is based on an incorrect definition of prejudice. "Prejudice means more than simply damage to the opponent's cause." *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995). Prejudice precluding the admission of evidence means having an "undue tendency to move the tribunal to decide on an improper basis." *Id.*

Defendant argues that the prosecutor had ample evidence to prove defendant's plan or scheme without having to include defendant's other acts. Even without the evidence of the uncharged offenses, the jury was presented with enough testimony to form a proper basis from which to convict defendant. Thus, it is apparent that the admitted evidence did not have the "undue tendency to move the tribunal to decide on an improper basis"; therefore, it could not have been so prejudicial that it substantially outweighed the evidence's probative value.

In addition, the trial court gave a limiting instruction to the jury, which helped cushion the evidence's potential prejudicial effect. It is well settled that jurors are presumed to follow their jury instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Furthermore, reversal is only appropriate if this Court decides that the error was not harmless. *People v Mateo*, 453 Mich 203, 214; 551 NW2d 891 (1996). "An error is harmless if it is highly probable that, in light of the strength and weight of the untainted evidence, the tainted evidence did not contribute to the verdict." *People v Bone*, 230 Mich App 699, 703; 584 NW2d 760 (1998).

Defendant pleaded a general denial to all charges. The prosecutor offered the testimony of defendant's four companions into evidence, all of whom testified that defendant had in fact participated in the breakings and enterings with which he was charged. The witnesses further testified that defendant not only participated in the crimes, but that he located and chose which properties would be targeted. They also testified concerning how the break-ins were accomplished and the items that defendant specifically stole. When the possible tainted evidence

is removed, the jury was still presented with evidence that, on its own, was sufficiently strong enough to prove that five break-ins occurred on four different pieces of property.

Therefore, defendant has failed to prove that the trial court's ruling on the admission of the other acts evidence was an abuse of discretion.

Affirmed.

/s/ David H. Sawyer

/s/ Henry William Saad

/s/ Richard A. Bandstra